

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA

Plaintiff,

vs.

KENNETH GORDON WESCOTT

Defendant.

Case No. 2:14-cr-00085-APG-CWH

**REPORT AND
RECOMMENDATION**

This matter is before the Court on *pro se* Defendant Kenneth Gordon Wescott's ("defendant") motion to dismiss for lack of territorial jurisdiction (# 80), filed April 10, 2015, the government's opposition (# 91), filed April 27, 2015, and defendant's reply (# 99), filed May 4, 2015.

BACKGROUND

On March 11, 2014, a federal grand jury indicted defendant with one count of Coercion and Enticement in violation of 18 U.S.C. § 2422(b). (#1). Trial is currently scheduled to commence on June 29, 2015.

DISCUSSION

Defendant moves to dismiss the indictment for lack of jurisdiction over the geographical location where the alleged criminal activity took place. Defendant argues that the United States has no territorial jurisdiction to prosecute him for violations of the United States Code because the "police" powers of the government are limited to offenses which occur in locations under the jurisdiction of the United States. Defendant demands the production of various documents to prove ownership of the geographical location where the alleged criminal activity took place. The government responds that

1 defendant used the internet, an instrumentality of interstate commerce to attempt to persuade a minor
 2 to engage in criminal sexual activity, and therefore the federal court has jurisdiction over the offense
 3 charged. Defendant replies by restating his previous argument, and adding that a District Court of the
 4 United States, but not a United States District Court, has jurisdiction over federal offenses, erroneously
 5 distinguishing one as a state court and one as a federal court. Defendant also argues that the United
 6 States has no jurisdiction over the internet or interstate commerce.

7 ANALYSIS

8 Federal Rule of Criminal Procedure 12(b)(2) provides that a claim that the indictment fails to
 9 invoke the Court's jurisdiction, as Defendant argues, may be made at any time while the case is
 10 pending. On this basis, defendant's motion is timely.

11 Meanwhile, the government contends that defendant, while in Nevada,¹ used the internet to
 12 commit the alleged crime. (#1). Accordingly, the government must prove to this Court that the
 13 offense occurred using a facility or means of interstate commerce.

14 Title 18 U.S.C. § 2422(b) provides in pertinent part:

15 Whoever, using ... any facility or means of interstate or foreign commerce, or within the
 16 special maritime and territorial jurisdiction of the United States ... knowingly persuades,
 17 induces, entices, or coerces any individual who has not attained the age of 18 years, to
 18 engage in prostitution or any sexual activity for which any person can be charged with
 a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not
 less than 10 years or for life.

19 In his extensive arguments regarding geographical jurisdiction, Defendant fails to recognize
 20 that 18 U.S.C. § 2422(b) prohibits unlawful persuasion of a minor either within the territorial
 21 jurisdiction of the United States or by using a facility or means of interstate commerce, that is, the
 22 internet, as alleged here. Contrary to defendant's argument, it is well settled that the internet is an
 23 instrumentality of interstate commerce. *See United States v. Tello*, 600 F.3d 1161, 1165 (9th Cir.
 24 2010); *see also United States v. Sutcliffe*, 505 F.3d 944, 953 (9th Cir. 2007) ("[T]he Internet is an
 25 instrumentality and channel of interstate commerce."); *United States v. Tykarsky*, 446 F.3d 458, 470
 26 (3d Cir. 2006) (same). Thus, the Court finds it has federal jurisdiction over the alleged offense, and

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 28 ¹ Defendant concedes that Nevada is a judicial district within the United States. 28 U.S.C. § 108.

1 the indictment properly invokes this Court's jurisdiction.

2 **RECOMMENDATION**

3 Accordingly, **IT IS HEREBY RECOMMENDED** defendant's motion to dismiss for lack of
4 territorial jurisdiction (# 80) be **denied**.

5 **NOTICE**

6 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
7 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
8 held that the courts of appeal may determine that an appeal has been waived due to the failure to
9 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
10 has also held that (1) failure to file objections within the specified time and (2) failure to properly
11 address and brief the objectionable issues waives the right to appeal the District Court's order
12 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
13 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

14 DATED: May 6, 2015

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17 **C.W. Hoffman, Jr.**
18 **United States Magistrate Judge**
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